

1 SNELL & WILMER L.L.P.
2 Philip J. Graves (SBN 153441)
3 pgraves@swlaw.com
4 Greer N. Shaw (SBN 197960)
5 gshaw@swlaw.com
6 Deborah S. Mallgrave (SBN 198603)
7 dmallgrave@swlaw.com
8 350 South Grand Avenue, Suite 2600
9 Two California Plaza
10 Los Angeles, CA 90071
11 Telephone: (213) 929-2500
12 Facsimile: (213) 929-2525
13
14 Attorneys for Plaintiff
15 James R. Glidewell Dental Ceramics, Inc.
16 d/b/a Glidewell Laboratories

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 JAMES R. GLIDEWELL DENTAL
16 CERAMICS, INC.,

17 Plaintiff,

18 vs.

19 KEATING DENTAL ARTS, INC.,

20 Defendant.

21
22
23
24
25 AND RELATED
26 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**DECLARATION OF SEEPAN
PARSEGHIAN IN SUPPORT OF
GLIDEWELL'S MOTION IN
LIMINE #8 TO EXCLUDE
EVIDENCE AND ARGUMENT
REGARDING STATEMENTS OR
RULINGS BY THE COURT ON
EITHER PARTY'S PRIOR
MOTIONS, INCLUDING SUMMARY
JUDGMENT MOTIONS**

Hearing

Date: January 28, 2013
Time: 8:30 a.m.
Ctmm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013
Jury Trial: February 26, 2013

1 I, Seepan Parseghian, declare:

2 1. I am an attorney licensed to practice law in the State of California and
3 am an associate in the law firm of Snell & Wilmer L.L.P., counsel for Plaintiff
4 James R. Glidewell Dental Ceramics, Inc. ("Plaintiff") in the above-entitled action.
5 I have first-hand, personal knowledge of the facts stated herein and, if called to
6 testify, could and would competently testify to those facts.

7 2. This declaration is submitted in support of Glidewell's Motion In
8 Limine No. 8 To Exclude Evidence and Argument Regarding Statements or
9 Rulings By the Court on Either Party's Prior Motions, Including Summary
10 Judgment Motions.

11 3. Attached as Exhibit 1 is a true and correct copy of pages 1-5 of the
12 hearing transcript of the parties' cross-motions for summary judgment, heard by the
13 Court on December 21, 2012, including the Court's verbally-delivered tentative
14 ruling as to some of those motions.

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17 Executed on January 17, 2013, at Los Angeles, California.

18
19
20 

21 Seepan Parseghian
22
23
24
25
26
27
28

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE DAVID O. CARTER, JUDGE PRESIDING

JAMES R. GLIDEWELL DENTAL
CERAMICS, INC.,
Plaintiff,

vs.

SACV-11-1309-DOC

KEATING DENTAL ARTS, INC.,
Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Hearing on Motions

Santa Ana, California

Friday, December 21, 2012

SHARON A. SEFFENS, RPR
United States District Courthouse
411 West 4th Street, Suite 1-1053
Santa Ana, CA
(714) 543-0870

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 PHILIP J. GRAVES

4 GREER SHAW

5 FOR THE DEFENDANT:

6 LYNDA J. ZADRA-SYMES

7 DAVID JANKOWSKI

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

1 SANTA ANA, CALIFORNIA; FRIDAY, DECEMBER 21, 2012; 4:30 P.M.

2 THE COURT: Counsel, let me start off because I
3 started off inartfully before. Here are some initial
4 feelings and concerns about Docket No. 84. Docket 84 is
5 Defendant's Motion for Summary Judgment as to No
6 Infringement of Glidewell's Registered Trademark. Is that
7 correct? Why don't you check your docket numbers and make
8 certain.

9 MR. GRAVES: That's correct.

10 THE COURT: Tentatively, I'm prepared concerning
11 Defendant's Motion for Summary Judgment as to no
12 infringement to grant that motion.

13 I think that the defendant has shown that the
14 plaintiff has failed to establish at least one element of
15 the trademark infringement, namely, that there is a
16 likelihood of confusion between the parties' marks.

17 The Court is well-aware that the Ninth Circuit
18 considers eight factors to determine the likelihood of
19 confusion between the parties' marks: (1) strength of the
20 plaintiff's mark; (2) proximity of the goods; (3) similarity
21 of the marks; (4) evidence of actual confusion; (5)
22 marketing channels used; (6) type of goods and the degree of
23 care likely to be exercised by the purchaser; (7)
24 defendant's intent in selecting the mark; and (8) likelihood
25 of expansion of the product lines.

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

1 Here, tentatively, I feel the plaintiff has a
2 relatively weak mark, and I am inclined to find that it's
3 suggestive; also, that the defendant's mark is substantially
4 not similar, particularly considering the relatively
5 sophisticated customer base. And that's dentists who know
6 the products well.

7 Tentatively, plaintiff's mark, "BruxZir," is a
8 composite of bruxer (the common term for someone who grinds
9 his teeth) and zirconia (the material used to manufacture
10 it). It suggests the product: a zirconia crown made for
11 bruxers.

12 Second, defendant's mark, "KDZ Bruxer," taken as a
13 whole, is not similar. While both feature the root "brux,"
14 (also featured in many similar products related to
15 tooth-grinding and bruxism), defendant's mark prominently
16 features at the beginning of the mark a series of
17 identifying initials that have nothing to do with
18 plaintiff's mark. Also, KDZ is in much larger type than the
19 word "Bruxer" in the logo in which the mark generally
20 appears.)

21 While some of the Sleekcraft factors (the factors
22 used to determine likelihood of confusion) do weigh in favor
23 of confusion, they are far outweighed by the fundamental
24 difference between these marks.

25 For example, the fact that the products associated

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

1 with the marks are the same (dental crowns), and are
2 marketed in the same channels as competitors, does weigh in
3 favor of likelihood of confusion.

4 However, overall, the Sleekcraft factors
5 tentatively show there is no genuine dispute of material
6 fact that infringement has occurred.

7 Those are thoughts and subject to argument here
8 today.

9 Concerning the Motion for Summary Judgment
10 canceling plaintiff's registration (Docket No. 83), I'm
11 inclined to deny that motion.

12 My initial thoughts were that plaintiff's mark is
13 federally registered and entitled to a strong presumption of
14 validity.

15 The mark, "BruxZir," is clearly not generic as
16 alleged by the defendant.

17 I believe that it is suggestive, as the composite
18 includes pieces of the words "Bruxer" and "Zirconia,"
19 suggesting a dental crown made of zirconia that treats
20 bruxism. It does not describe the product, as a degree of
21 imagination is needed in order to arrive at the product.

22 I tentatively feel Keating has not presented facts
23 sufficient to establish, as a matter of law, that the mark
24 "BruxZir" is not entitled to trademark protection.

25 Concerning the third motion that you have brought

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: January 12, 2012

/S/ Sharon A. Seffens 1/12/12

SHARON A. SEFFENS, U.S. COURT REPORTER

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

Glidewell Laboratories v. Keating Dental Arts, Inc.

United States District Court, Central, Case No. SACV11-01309-DOC (ANx)

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2013, I electronically filed the document described as **DECLARATION OF SEEPAN PARSEGHIAN IN SUPPORT OF GLIDEWELL'S MOTION IN LIMINE #8 TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING STATEMENTS OR RULINGS BY THE COURT ON EITHER PARTY'S PRIOR MOTIONS, INCLUDING SUMMARY JUDGMENT MOTIONS** the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

David G. Jankowski
Jeffrey L. Van Hoosear
Lynda J Zadra-Symes
Darrell L. Olson
Knobbe Martens Olson and Bear LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

**Attorneys for Defendant Keating
Dental Arts, Inc.**
Tel: (949) 760-0404
Fax: (949) 760-9502

Jeffrey.VanHoosear@kmob.com
David.Jankowski@kmob.com
Lynda.Zadra-symes@kmob.com
Darrell.Olson@knobbe.com
litigation@kmob.com

David A. Robinson
James Azadian
Enterprise Counsel Group
Three Park Plaza, Suite 1400
Irvine, CA 92614

**Attorneys for Defendant Keating
Dental Arts, Inc.**
Tel: (949)833-8550
Fax: (949) 833-8540

drobinson@enterprisecounsel.com
jazadian@enterprisecounsel.com

Dated: January 17, 2013

SNELL & WILMER L.L.P.

By: s/Greer N. Shaw

Philip J. Graves
Greer N. Shaw
Deborah S. Mallgrave

Attorneys for Plaintiff
James R. Glidewell Dental Ceramics, Inc.
d/b/a Glidewell Laboratories